

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

THE TRUSTEES OF COLUMBIA  
UNIVERSITY IN THE CITY OF NEW  
YORK,

Plaintiff,

v.

SYMANTEC CORPORATION,

Defendant.

Civil Action No. 3:13-cv-808

**DEFENDANT SYMANTEC CORPORATION’S MEMORANDUM IN SUPPORT OF  
MOTION TO FILE STIPULATION REGARDING SOURCE CODE UNDER SEAL**

Pursuant to Eastern District of Virginia Local Rules 5(C) and 5(D), Defendant Symantec Corporation (“Symantec”) respectfully requests that the Court seal the parties’ Stipulation Regarding Source Code (“Stipulation”).

**I. BACKGROUND AND APPLICABLE LAW**

The parties’ Stipulation, attached hereto as **Exhibit A**, includes certain confidential information which has not been disclosed to the public. Information included in the Stipulation reflects Symantec confidential information regarding how Symantec maintains its source code and the capabilities of its internal systems and network architectures. For instance, the Stipulation describes methods by which Symantec source code repositories may be accessed.

Symantec recognizes that ordinarily records of judicial proceedings are publicly available. *Columbus-Am. Discovery Grp. v. Atlantic Mut. Ins. Co.*, 203 F.3d 291, 303 (4th Cir. 2000) (“Publicity of [court] . . . records . . . is necessary in the long run so that the public can

judge the product of the courts in a given case.”). The Court’s authority to seal court documents, however, is well-established in the Fourth Circuit. *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000). This Court has specifically recognized that, where a party’s confidential communications are germane to the resolution of a motion, it is appropriate to seal those communications so that the Court may consider them without requiring public disclosure. *See, e.g., Diamonds Direct USA, Inc. v. BFJ Holdings, Inc.*, Case No. 3:12cv303, at 2-3 (E.D. Va. Aug. 31, 2012, ECF No. 52). In deciding whether to grant a request to seal documents submitted to the Court, the Court considers whether “the public’s right of access is outweighed by competing interests.” *Id.* This analysis typically will involve a three-part procedure: (1) the court must provide public notice of the request to seal and allow interested parties a reasonable opportunity to object; (2) the court must consider less drastic alternatives to sealing the documents; and (3) the court must articulate specific reasons and factual findings supporting its decision to seal. *Ashcraft*, 218 F.3d at 302.

## **II. THE PARTIES’ STIPULATION SHOULD BE FILED UNDER SEAL**

The applicable factors justify sealing the parties’ Stipulation. The public will be given adequate notice of the request because the Clerk will docket Symantec’s Motion to Seal in the public record, and Symantec has filed an appropriate Notice of its Motion to Seal which will be posted for a minimum of 48 hours. Assuming that no member of the public objects during that period, then adequate time for objection will have been afforded. *See In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (“[R]equir[ing] that closure motions be docketed reasonably in advance of their disposition [] give[s] the public and press an opportunity to intervene and present their objections to the court”).

Additionally, there is no less drastic alternative to filing the Stipulation other than to file it under seal. As mentioned, the Stipulation reflects Symantec confidential information

regarding how Symantec maintains its source code and the capabilities of its internal systems and network architectures. To allow the Court to consider this submission without harming the parties' interests, it should be filed under seal. *See Diamonds Direct, Inc.*, Case No. 3:12cv303, Dkt. 52, at 2-3 (E.D. Va. Aug. 31, 2012).

Finally, in accordance with the strictures of E.D. Va. Loc. R. 5(C), Symantec has submitted a Proposed Order that sets forth the required standards and findings to satisfy the third prong of the analysis. The Court satisfies the third prong of the analysis by its entry of that Proposed Order.

### **III. CONCLUSION**

For the foregoing reasons, Symantec respectfully requests that the Court grant its Motion and enter the Proposed Order submitted therewith.

Dated: June 9, 2014

SYMANTEC CORPORATION

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## CERTIFICATE OF SERVICE

I hereby certify that on this 9<sup>th</sup> day of June, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which then will send automatic notification of such filing (NEF) to the following:

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